IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Application No.3420 of 2007

Anupkumar Motilal Agarwal — Applicant
Vs.
State of Maharashtra & anr. — Respondents

Miss Rekha Safari for applicant.
Mr.S.R.Shinde, APP for State.

CORAM: B.H.MARLAPALLE, J.

October 26, 2007.

P.C.

. Heard Ms.Safari, the learned counsel for the applicant who is seeking leave to appeal against the order of acquittal passed by the learned Special Metropolitan Magistrate on 31/8/2007 in C.C. No.65/SS/07. The said case was filed under Section 138 of the Negotiable Instruments Act, 1881.

. It was claimed by the applicant - complainant that an amount of Rs.2,00,000/- to the accused by way of loan and the dishonoured cheques were issued in discharge of the said loan liability. It was more particularly contended that the electricity bill, water bill and the telephone bill etc. was to be paid to the tune of Rs.40,000/- and the loan amount

of Rs.1,60,000/- was advanced in cash thus making a total of Rs.2,00,000/- and the complainant had handed over the canteen to the accused to be run from shop no.10, Cotton Exchange Building.

. The trial Court held that no documentary evidence was placed on record in support of the plea that cash loan to the tune of Rs.1,60,000/- was advanced to the accused and more so because the accused had denied that she had received any such amount. The accused in her statement recorded under Section 313 of Cr.P.C. admitted to have issued two cheques for the payment of electricity, telephone and water charges arrears and on account of her losses in business she did not have sufficient funds and consequently cheques got dishonoured. She also stated that he had kept a security deposit of Rs.50,000/- with the complainant and the complainant in his cross-examination has admitted the same.

. On these obtaining circumstances, the finding recorded by the trial Court that the complainant could not prove that the dishonoured cheques were issued for the repayment of loan amount of Rs.2 lakhs does not call for reconsideration at the hands of

this Court and hence leave to appeal is hereby refused and the application is rejected.

(B.H.MARL